THE LATTER-DAY SAINTS

MILLENNIAL STAR.

"Holiness unto the Lord."

No. 13, Vol. XXXIV. Tuesday, March 26, 1872. Price One Penny.

THE CONSTITUTIONAL CONVENTION.

(Condensed from the Utah papers.)

At 10 a.m. on Monday, February 19th, the delegates elected to the convention to form a constitution for a State government for Utah, met in the City Hall, Salt Lake City, when a temporary organization was effected, Hon. Lorenzo Snow being elected President *pro tem.*

On motion of Mr. Fitch, the chair was instructed to appoint a committee of five on credentials, and appointed Hons. Thos. Fitch, Geo. Q. Cannon, Frank Fuller, W. B. Preston and Wm. Jennings such committee.

The convention then adjourned.

At the afternoon's session the committee on credentials reported the following persons as entitled to seats in the convention—

Beaver County—John R. Murdock, Daniel Tyler, E. H. Blackburn—3.

Box Elder—Chester Loveland, Lorenzo Snow, M. W. Dalton, J. C. Wright, E. P. Johnson,—Bruce—6.

Cache—William Hyde, W. F. Littlewood, William H. Maughan, M. D. Hammond, William B. Preston, L. H. Hatch, M. W. Merrill, O. N. Liljenquest, Moses Thatcher—9.

Davis—Nathan T. Porter, Thos. S. Smith, John S. Smith, John Telford, Anson Call, Thos. F. Ronche, Lot Smith, John R. Barnes—7.

Iron—Silas S. Smith, Jesse N. Smith, Edward Dalton, S. M. Blair—4.

Juab—John Hague, Geo. Kendall, A. G. Sutherland—3.

Kane—John Nebeker, A. M. Harmon—2.

Millard—P. D. Lyman, Culbert King, Daniel Thompson, Thos. Callister—4.

Morgan—Lyman W. Porter, Jesse Haven—2.

Piute and Sevier—Peter Rasmussen, Wm. Morrison, H. A. Holcombe—3.

Rich—Chas. C. Rich—1.

Salt Lake—Z. Snow, Geo. Q. Cannon, Thos. Fitch, John T. Caine, F. Fuller, D. E. Buel, John Sharp, A. P. Rockwood, Reuben Miller, E. D. Hoge, E. M. Barnum, Thos. P. Akers, A. Miner, H. D. Johnson, Wm. Jennings, A. Carrington, Orson Pratt, William Hayden—18.

Sanpete—George Peacock, David Candland, H. W. Sanderson, Abner Lowery, W. S. Snow, R. R. Lewelleyn, C. A. Madsen—7.

Summit—George G. Snyder, Samuel F. Atwood, Wm. W. Cluff—3.

Utah—John Brown, John B. Milner, A. K. Thurber, Orowell Simons, William Price, William Bringhurst, David Evans, William B. Pace, L. E. Harrington—10.

Wasatch—N. C. Murdock, Abraham Hatch, H. S. Alexander, John W. Witt—4.

Washington—Solon Foster, Israel Evans, William Snow, Joseph W. Young—4.

Weber—F. D. Richards, F. A. Hammond, L. J. Herrick, Gilbert Belknap, Lorin Farr, Charles W. Penrose, G. S. Erb, Henry Eudey—8.

Tooele—G. W. Bryan, John Rowberry, R. Warburton, G. Burridge, John Franks, E. Hunter—6.

General E. M. Barnum offered the following resolution, which was adopted—

Resolved—That the following oath [or affirmation] be taken by each member of this convention, before entering upon the full duties of his office, and that the same be hereafter engrossed and subscribed by each member taking the same—

"You and each of you do solemnly swear that, to the best of your knowledge and ability, you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office on which you are about to enter, so help you God."

And that the said oath shall be administered to the members of the convention now present by Hon. Elias Smith, Probate Judge of Salt Lake County.

Hon. Elias Smith then administered the oath to the members.

Gen. E. M. Barnum was elected permanent President of the convention, and was escorted to the President's desk by Hons. Thos. Fitch and Frank Fuller.

Gen. Barnum, in a brief speech, expressed his thanks for the confidence thus reposed in him, and said while he would have desired that some other person had been selected for the honor, he would discharge his duties faithfully, and hoped a constitution would be framed that would not only challenge the approval of Congress, but of the people of all the United States.

The following officers were then elected on permanent organization—

Secretary—R. L. Campbell.

Assistant Secretary—L. John Nuttall.

Second Assistant Secretary—John Henry Smith.

Doorkeepers—John D. T. McAllister and Milando Pratt.

Messengers—Robt. S. Campbell and Brigham W. Carrington.

Reporters—David W. Evans and John Q. Cannon.

Printer—Angus M. Cannon.

Fireman—Rodney Badger.

Pending the election of chaplain, Mr. Fitch offered a resolution that a committee be appointed by the President to wait upon a clergyman of each religious denomination in the city, and request them to attend the convention each day, in turn, and offer prayer at the opening of the proceedings. The resolution was adopted, and Mr. Fitch, of Salt Lake County, Mr. Jesse N. Smith, of Iron County, and Mr. Thurber, of Utah County, were appointed the committee.

Several resolutions were offered and adopted with regard to the order of business, and rules governing the convention.

Mr. Fitch offered the following, which was adopted—

Resolved—That the sergeant-at-arms be instructed to procure a United States flag, and unfurl the same on the flagstaff in front of this hall during the sittings of the convention.

Mr. Miner moved that the constitution adopted by the State of Illinois in 1870 be accepted as the basis of the constitution to be framed by this convention.

Mr. Fitch submitted a similar resolution adopting the constitution of the State of Nevada, and Mr. Farr an amendment that the constitution framed by the convention of Utah in 1862 be adopted as said basis.

After considerable discussion, Mr. Fitch's motion prevailed.

A letter from Gen. P. E. Conner, returning his thanks to the people for electing him to the convention, and

declining to serve as he was not a citizen nor resident of Utah, was read and ordered to be spread on the minutes.

Judge W. Hayden moved that the convention adjourn *sine die*, and gave as his reasons that he was opposed to the object of the convention because 1st, no Enabling Act had been passed for Utah's admission; 2nd, it was an insult to Congress after the recent legislation, Utah not possessing the proper population; 3rd, additional taxation would necessarily follow from increased expenses; 4th, no bill had been passed authorizing this convention; 5th, our acts being informal would not have any more value than a common meeting of citizens.

Col. Akers made an eloquent and powerful speech opposing Judge Hayden's motion; urged that no Territory ever had such strong reasons why it should become a State as Utah had now; that it was necessary to harmonize our judiciary and lift the law into proper respect now falling into disrepute through judicial wrangling; that political freedom which we could not enjoy as a Territory would put new life into every channel of industry and cause the State to grow with an increase corresponding to the unparalleled progress of the Federal Union.

Mr. Fitch moved as an amendment to Judge Hayden's motion, that the convention adjourn till to-morrow at 10 a.m.

Second day.

The convention resumed its sitting pursuant to adjourment, and after the transaction of some preliminary business the standing committees were appointed.

The question on Judge Hayden's resolution that the convention be adjourned *sine die* having been called, Hon. Thos. Fitch delivered the following speech—

If there be those, within or without this chamber, who imagine that the members of this convention will be content to go through the form of constructing an edifice of State government, without hope that such edifice will ever be occupied by a living tenant, they mistake the spirit of an earnest people, and the purpose of their representatives.

The object of this convention will not be accomplished until room shall be found upon our national banner for the Star of Deseret, and the question which confronts us at the threshold of our labors is, Will the necessities for a State government justify some effort and much sacrifice on the part of the people of Utah?

An influential Mormon citizen said to me not long since, upon his return from a trip East, "I am satisfied that there is no safety for us without a State government, and that we can have no State government without concessions." He stated the case with mathematical precision. There is no safety for the people of Utah without a State government, for under the present condition of public affairs, their property, their liberties, their very lives are in constant and increasing jeopardy.

Let us review the situation. In August, 1870, James B. McKean arrived here as Chief Justice of the Supreme Court of Utah Territory, and District Judge of the Third Judicial District. From the hour of his arrival he has been the leading, controling spirit of the existing movement against Mormon institutions. He is not, perhaps, an immoral man in his private life, and for the purposes of this argument, it is not necessary to inquire whether or no he is a corrupt man, either in private or official transactions, but he certainly is that most dangerous of all public functionaries—a judge with a mission to execute, a judge with a policy to carry out, a judge panoplied with a purpose as in complete steel. Whether or not consciously, but with implacable and unswerving determination, he has steadily subordinated his judicial duties and his judicial character to the fulfilment of his mission and the execution of his policy. Motions are held under advisement for months, civil business accumulates upon the calendar, great mining cases are referred or abandoned by disgusted litigants, and still the judge alternates between the business of an examining magistrate and the pleasure of thanking the grand jury for finding indictments. While possessing sufficient knowledge to comply with some of the forms of

law, and sufficient personal courage to forward his plans, he is yet destitute of the spirit of impartial jurisprudence. We all know there is a class of minds which, after many years of upright and dispassionate conduct, will, through lust of power, or gain, or fame, or other inordinate aim, suddenly develop some insurgent quality which stops nothing short of morbidness, little short of insanity. It is the prestige of his past that this man, notwithstanding his remarkable actions here, continues to receive the support of the Federal administration, while, with some sincerity in the righteousness of his crusade, he wins for himself the endorsement of thousands of persons who only know that they desire polygamy shall be destroyed, and who do not ask the price, nor inquire "how many Athenians are in mourning."

Whether or not this theory be correct respecting the cause, and it is the most charitable of any I can conceive, the result is the same. James B. McKean is morally and hopelessly deaf to the most common demands of the opponents of his policy, and in any case where a Mormon, or a Mormon sympathizer, or a conservative Gentile be concerned, there may be found rulings unparalleled in all the jurisprudence of England or America.

Such a man you have among you, a central sun. What of his satellites?

The mineral deposits of Utah have attracted here a large number of active, restless, adventurous men, and with them have come many who are unscrupulous, many who are dishonest, many who are reckless, the hereditary foes of industry, order and law. This class, finding the courts and Federal officers arrayed against the Mormons, have, with pleased alacrity, placed themselves on the side of courts and officers. Elements ordinarily discordant blend together in the same seething cauldron. The officers of justice find allies in those men who, differently surrounded, would be their foes, the bagnios and the hells shout hosannas to the courts, the altars of religion are invested with the paraphernalia and the presence of vice. The drunkard spouses the cause of the apostle of temperance, the companion of harlots preaches the beauties of virtue and continence. All believe that license will be granted by the leaders in order to advance their sacred cause, and the result is an immense support from those friends of immorality and architects of disorder who care nothing for the cause but everything for the license. Judge McKean and Governor Woods, and the Walker Brothers, and others are doubtless pursuing a purpose which they believe in the main to be wise and just, but their following is of a different class. There is a nucleus of reformers and a mass of ruffians, a centre of zealots and a circumference of plunderers. The dram-shop interest hopes to escape the Mormon tax of $300.00 per month by sustaining a judge who will enjoin a collection of the tax, and the prostitutes persuade their patrons to support judges who will interfere by *habeas corpus* with any practical enforcements of municipal ordinances.

Every interest of industry is disastrously affected by this unholy alliance, every right of a citizen is threatened if not assailed by the existence of this combination. Your local magistrates are successfully defied, your local laws are disregarded, your municipal ordinances are trampled into the mire, theft and murder walk through your streets without detection, drunkards hurl their orgies in the shadow of your altars, the glare and tumult of drinking saloons, the glitter of gambling hells, and the painted flaunt of the bawd plying her trade now vex the repose of streets which beforetime heard no sound to disturb their quiet save the busy hum of industry, the clatter of trade, and the musical tinkle of mountain streams.

The processes by which this condition of affairs has been brought about, as well as the excuse for invoking these processes, may be briefly stated.

In 1856 a great political party declared itself opposed to polygamy as a relic of barbarism. In 1860 that party achieved power in the nation. In 1862 an act of Congress was passed, the object of which was to suppress polygamy in Utah. This law was permitted to remain a dead letter upon the statute books. The war to suppress the rebellion, the problems of

reconstruction growing out of that war, the proposed impeachment of President Johnson, the various exciting public questions of the day, diverted the minds of legislators and constituencies from the Mormon question, and not until after President Grant's inauguration did the anti-polygamy plank of the Republican platform loom up into national consequence. It was then observed that the anti-polygamy act of Congress of 1862 had never been enforced. The Territorial laws for drawing and empanneling juries, provided, as in all other communities, for a selection by lot. Nineteen-twentieths of the persons eligible to jury duty in Utah were Mormons, who naturally declined to indict or convict their neighbors for a practice which was believed by all to be a virtue rather than a crime. The law prescribed one rule, the sentiment of the community where the law existed prescribed another.

Similar conditions prevented the trial of Jefferson Davis for treason at Richmond. Similar conditions made it impossible to convict a violator of the fugitive slave law in New England. The forty-first Congress was asked to enact a law to meet the exigency, and the Cullom Bill was framed. This measure provided that the selection of jurors should be given to the United States Marshal, that polygamists and those who believed in polygamy should be excluded from the jury box, that the wife might be a witness against the husband, that marriage might be proved in criminal cases by evidence of general reputation, and that the statute of limitations should not apply to charges of polygamy. The wisdom and justice of this sweeping measure were seriously questioned by the New York *Tribune* and other republican papers, and by such leading republican statesmen as Henry L. Dawes of Massachusetts, and Robert C. Schenck of Ohio, but the bill passed the House by nearly a party vote, and failed to become a law only because the United States Senate did not find time or inclination to consider it during the 41st Congress.

After the adjournment, or about the time of the adjournment of the second session of the 41st Congress, James B. McKean was appointed Chief Justice of Utah, and with military promptness he proceeded by his decisions to establish, as rules of law, the propositions of the defeated Cullom Bill. He decided in the case of Hemps ead *vs.* Snow, that the court over which he presided was a United States court, that it was not a legislative but a constitutional court, and that the Territorial Prosecuting Attorney was not, even when prosecuting offenders charged with violation of Territorial laws, the proper prosecuting officer of his court, but that the United States District Attorney was such. He decided in the case of Patrick *vs.* McAllister, that the Territorial Marshal was not in any case the proper executive officer of his court, but that the United States Marshal was such in all cases. He decided in another case that the Territorial Legislature of Utah had no power under the organic act to prescribe rules for obtaining juries to try any cases in his court, and in prescribing rules himself for that purpose he declined to consult the assessment roll, or invoke the usual method of selection by lot, but he ordered the clerk to issue an open venire to the United States Marshal.

Thus the first proposition of the defeated Cullom Bill, that the Marshal might pick, I will not say pack, the jury, was decreed into existence. A temporary delay in starting the engine of persecution was caused by lack of fuel, the controller of the treasury declining to audit the bills for the expenses of this court thus elevated to a United States tribunal, and the Territorial officers declining to pay out Territorial funds to persons not authorized by Territorial law to receive them, but fuel was found somewhere, and the machinery began to move.

In September, 1871, a grand jury was summoned by the United States Marshal to attend the Third District Court of Utah. From the counties of Salt Lake, Tooele, Summit, Green River, Davis, Morgan, Weber, Box Elder, Cache and Rich, containing a population of about 60,000 Mormons and 10,000 Gentiles, 23 grand jurors and 17 talesmen were selected and summoned. Of these forty persons seven were Mormons and thirty-three were Gentiles.

Each of the seven Mormons was examined on his *voir dire*, and to the questions of the U. S. District Attorney, each replied in effect that he was a member of the Church of Latter-day Saints, that he believed that polygamy was a revelation to that Church, and that in his own case he would obey the revelation rather than the law. When asked the further question as to whether this belief in the revelation would affect the action of the juror in voting for or against an indictment for polygamy, some jurors replied that it would affect their action, others that it would not. The U. S. District Attorney stated to the court that he intended to bring a number of accusations of polygamy before the grand jury, and challenged the seven Mormons for bias. Judge McKean sustained the challenge and dismissed the Latter-day Saints from the box.

Thus the second proposition of the defeated Cullom Bill was established by the decree of Judge McKean. The seven Mormons whom the U.S. Marshal had made a show of summoning were ruled off, and 60,000 people in the third district deprived of the privilege of representation in the jury box.

It is a fact worthy of notice that this grand jury—from which Mormons were excluded because they believed in polygamy, never found a single indictment for violation of the act of Congress of 1862, and never, so far known, sent for a single witness upon, or attempted to consider any accusation of polygamy—indictments for "lewd and lascivious cohabitation," under a rusty old Territorial statute, were found by the score. Indictments for murders committed fifteen or twenty years ago were found by the dozen, upon the unaided and uncorroborated testimony of a witness who confessed himself the principal in these murders. But the threat of "indictment for polygamy" having fulfilled its mission by furnishing an excuse to exclude Mormons from the grand jury, was heard no more.

I pass for the present from this grand jury to further review the process by which Judge McKean vitalized the abortive Cullom Bill.

A man named Thomas Hawkins had been indicted under the Territorial statute for the crime of adultery, and in October, 1871, he was tried before Judge McKean and a jury. Two or three Mormons who chanced to creep on the Marshal's venire were asked if they believed in polygamy, to which question they replied yes. They were further asked if they believed a man could be guilty of adultery, who committed the act constituting that offence, under a claim of plural or polygamous marriage. The reply was, no. Whereupon the District Attorney challenged the jurors for bias, and the judge sustained the challenge and directed the jurors to leave the box, although there was not a line of pleading on record, nor a word of counsel or client, by which the judge could judicially conjecture, much less know, that the defendant would set up any polygamous marriage as a defence to the charge of adultery.

Hawkins was convicted on the sole evidence of his wife, who, in despite of the protest of counsel, was permitted by Judge McKean to testify in the case, and thus the third proposition of the defeated Cullom Bill, that a wife might testify against the husband, was established by decree of the Judge. Hawkins was subsequently sentenced to pay $500 fine and be imprisoned for three years, and he is now in the Territorial prison pending an appeal to the Supreme Court of the Territory. From present appearances he is likely to serve out his term, for his bonds pending an appeal have been fixed at twenty thousand dollars, and his whole property would not suffice to pay his $500 fine. Judge McKean refused for three months to sign the bill of exceptions for Hawkins' appeal to the Territorial Supreme Court, on the ground that the bill was too voluminous, that it contained a record of all the proceedings in the case, proceedings reported by an official phonographic reporter appointed by himself. When the Supreme Court of the Territory met on the 5th of February, Chief Justice McKean presiding, the record in the Hawkins case was not quite ready, because the clerk had not had time to prepare it in the short period that had passed since Judge McKean signed the bill of exceptions, whereupon the Chief Justice adjourned

the Supreme Court until the third Monday in June next, I will not say to prevent the Hawkins case being heard and reversed by his associates, although I understand that such is the view Hawkins takes of it. But then Hawkins is probably prejudiced, his recollections of some of the proceedings in his case not having increased his confidence in the impartiality of the Chief Justice. Let me refer to a few of those proceedings.

The act of Congress governing the mode of procedure in criminal cases in the courts of the United States, gives to the accused ten peremptory challenges to the jury against two accorded to the prosecution, while the Territorial law governing the mode of procedure in criminal cases in the Territorial courts gives to the prosecution and the accused six challenges each. The act of Congress referred to bars all prosecution for non-capital felonies (except forgeries) not instituted within two years from the date of the offence, while the Territorial laws contain no statute of limitations. The Territorial laws provide that in non-capital cases the jury which finds a defendant guilty may prescribe the punishment. The act of Congress is silent upon this subject, and of course leaves the power of sentence where in the absence of statutory regulation it would belong--with the judge.

As Judge McKean had ruled that his was a U. S. court, the counsel for Hawkins asked the court to give their client the benefit of the ten challenges allowed by act of Congress. Judge McKean refused, and allowed only the six permitted under the laws of Utah. The defendant's counsel requested an instruction to the jury that the law of Congress protected the defendant for acts committed two years before the finding of the indictment. Judge McKean refused because the Territorial laws presented no limit for prosecutions. Then counsel asked the judge to allow the jury to fix the punishment, as prescribed by the Territorial laws. He refused that also. He pursued the practice of a United States court when the jury were being selected, of a Territorial court when the jury were being peremptorily challenged. He pursued the practice of a Territorial court when the act of Congress would have limited the prosecution, of a United States court again when the jury might, under Territorial law, have been more lenient in prescribing punishment than the exigencies of a great, burning "mission" would warrant.

What authorities were cited? What precedents involved? What chain of reasoning offered to sustain these judicial usurpations? None. The section of the statute of Utah under which Hawkins was indicted, and his wife permitted to testify against him, both before the grand and petit jury, reads as follows—

"No prosecution for adultery can be commenced but on the complaint of the husband or wife."

The statutes of but few States make adultery a felony, and adjudicated cases upon such statutes are rare. In Minnesota, however, the statute on this subject is precisely the same as that of Utah, and the Supreme Court of Minnesota, in a case strikingly analogous to the Hawkins case, in the case of State *vs.* Armstrong, reported in the 4th volume of Minnesota Supreme Court reports, set aside a similar conviction obtained upon the testimony of the wife, and in its opinion used the following language—

"The Act provides that no prosecution for adultery shall be commenced, except on the complaint of the husband or wife."—Common statutes Minnesota, 728, sec. 1. "It is contended that this provision authorizes them to be sworn as witnesses against each other before the grand jury in making the complaint. We think, however, that such was not the intention of the Legislature, etc., etc. We could not, etc., consistently with the rules of construction of statutes, add another case to those in which the confidence of the marriage relation may be violated, while another reasonable interpretation will fully satisfy the statute. We think, in limiting the prosecution of the crime of adultery to cases in which the complaint shall be made by the husband or wife, the Legislature only meant to say, that it was a crime, which, if the parties immediately

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THE LATTER-DAY SAINTS' MILLENNIAL STAR.

TUESDAY, MARCH 26, 1872.

THE ADMINISTRATION OF THE LORD'S SUPPER.

In this age of infidelity and skepticism, when it is fashionable to believe only in that which can be demonstrated after the manner of a problem in Euclid or proved like a sum in arithmetic, the glorious results of the mighty work accomplished by our Redeemer in his sojourn upon the earth and in his death upon the cross, are often undervalued, and even the first impressions of this influence will sometimes reach members of the Church of Jesus Christ of Latter-day Saints. These doubts with regard to the infinite blessings accruing to humanity from the mission of "he who died that we might live," are probably attributable in no slight degree to the absurd theories which some bodies of religionists advance concerning what they term "the finished work of Christ," theories which many intelligent men believe to be the source of much of the evil that now afflicts Christendom, which tend indeed to breed criminals, and which offer but few, if any incentives to men to lead lives of holiness and practical religion. But Latter-day Saints should be the last to permit the skeptic's doubts to have a moment's resting place in their minds. No men should so well appreciate and so highly value that matchless sacrifice of the Lamb slain before the foundation of the world, without whose propitiation we all should have been forever subject to the bonds of sin and in servitude to Satan, shut out from the presence of our Father in heaven, and remained the wretched creatures on whom the first and second deaths would both have power. They who realize that he alone is "the resurrection and the life," understand full well that redemption and eternal salvation were purchased for us through the atoning sacrifice on Calvary; and the nearer we approach the gates of the eternal city, or partake from its fountains of the waters of life and knowledge, the more thoroughly shall we realize how much he hath done for us and for our salvation, and our thankful hearts will the more joyously strive to fulfil every expression of his will.

One of the inestimable privileges inherited by the Saints, is that of uniting in partaking of the sacrament of the Lord's supper, wherein we hold in remembrance his sufferings and death and the blessed results flowing to us therefrom. But either from the frequency with which the Saints are privileged to surround the table of the Lord, or from their own carelessness or unfaithfulness it is by some undervalued, and instead of partaking of the emblems of Christ's body and blood with their hearts filled with thankfulness for the boon of thus being permitted to renew their covenants with Heaven, they eat and drink thereof with thoughts far astray, with ideas wandering to the ends of the earth, and occasionally with feelings of unkindness and uncharitableness

toward their brethren and sisters. Such eat and drink condemnation to their own souls.

We have a few ideas to present with regard to the administration of the sacrament, for whilst visiting some of the Branches we have felt pained when we noticed what we cannot term other than the slovenly manner in which this sacred rite was attended to; but, before doing so, will draw the attention of our brethren (especially the Branch Presidents, as on their shoulders generally rests the duty of seeing that this ordinance is duly attended to,) to the words of our Savior in his instructions to his disciples whom he had called from amongst the Nephites when he visited that people after his resurrection. These instructions will be found in the Book of Mormon (page 471, sixth European edition), where it is written—

And now it came to pass that when Jesus had spoken these words, he turned his eyes again upon the disciples whom he had chosen, and said unto them, behold verily, verily I say unto you, I give unto you another commandment, and then I must go unto my Father, that I may fulfil other commandments which he hath given me. And now behold, this is the commandment which I give unto you, that ye shall not suffer any one knowingly to partake of my flesh and blood unworthily, when ye shall minister it, for whoso eateth and drinketh my flesh and blood unworthily, eateth and drinketh damnation to his soul; therefore if ye know that a man is unworthy to eat and drink of my flesh and blood, ye shall forbid him; nevertheless ye shall not cast him out from among you, but ye shall minister unto him, and shall pray for him unto the Father, in my name, and if it so be that he repenteth, and is baptized in my name, then shall ye receive him, and shall minister unto him of my flesh and blood; but if he repent not, he shall not be numbered among my people, that he may not destroy my people, for behold I know my sheep, and they are numbered; nevertheless ye shall not cast him out of your synagogues, or your places of worship, for unto such shall ye continue to minister; for ye know not but what they will return and repent, and come unto me with full purpose of heart, and I shall heal them, and ye shall be the means of bringing salvation unto them. Therefore keep these sayings which I have commanded you, that ye come not under condemnation, for wo unto him whom the Father condemneth.

In the first place we would submit to the Elders presiding over Branches, that it is not wise to call Elders and Priests to administer the emblems who have but lately joined their Branches, and who consequently are not well acquainted with the various members thereof, as from such being called to officiate we have occasionally seen the bread and wine offered to those who had not been baptized, and they not knowing the law of the Lord partook thereof, and in so doing eat and drank damnation to their souls. And we cannot suppose that he who was the cause of their sinning would be found by a just judge without sin himself.

We have also observed that a practice is indulged in in some Branches of breaking the bread before the commencement of the services, but we have been unable to discover any one who could give unto us a reason for this practice. Surely our brethren are not in such a hurry that they begrudge the time occupied in the administration of the bread. We should all bear in mind the sacredness of this ordinance, and remember to do all things decently and in order, or the blessing promised by the Lord will not reach us. Instead of receiving spiritual strength, we shall become weak in the faith and fall into a spiritual lethargy from which the voices of the Elders will not arouse us, and even the judgments of God will fall unnoticed on our deadened ears. Those

who love the Lord and rejoice in his service, will not thus recklessly hurry the administration of the ordinances of his house.

We would also hint that we have noticed in some places vessels used that were certainly unworthy of such a sacred service. To say that such should be kept scrupulously clean would be but to repeat what all know, but what some appear to have forgotten. Therefore this gentle reminder. We think no Branch is so poor but that its vessels and cloths might be such that angels, were they to visit us, would not be loath to commemorate with us the death of him who is Lord both to them and to us. But broken or tarnished vessels and unclean cloths speak but sadly for the members of a Branch where such things are to be seen.

We are aware that in some small Branches the homes of the Saints are widely scattered, and the members therefore meet but seldom to worship the Lord. We have deplored this for the reason that we know the Saints cannot be so spiritually strong as they would be were they to assemble oftener. No matter how few a Branch may number, if its members realize the necessity of partaking of the Lord's supper with pure and holy motives and desires, and meet often for this purpose, they will increase in the light and love of the life which is eternal. But to partake of it unworthily involves terrible consequences. Our Savior has declared in this dispensation, "It mattereth not what ye shall eat, or what ye shall drink, when ye partake of the sacrament, if it so be that ye do it with an eye single to my glory; remembering unto the Father my body which was laid down for you and my blood which was shed for the remission of your sins." But while it mattereth not what we eat and drink, it is all important that we partake neither in careless thoughtlessness nor with impure or unsaintlike feelings, for if we do we simply go through a solemn mockery of that redemption which "is the science and song of all eternity," and render possible for it to be said of us as Paul wrote of the Church at Corinth, For this cause many are weak and sickly among you, and many sleep.

G. R.

NOTTINGHAM CONFERENCE.—A Conference will be held in the Latter-day Saints' meeting room, Shakespeare Street, Nottingham, on Sunday, April 7th. The meetings to commence at 10.30 a.m., and 2.30 and 6.30 p.m.

MINUTES OF A DISTRICT MEETING

HELD AT BOLTON, SUNDAY, MARCH 17, 1872.

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10.30 a.m.

Elders from Utah present—George Reynolds, of the Liverpool Office, and Geo. P. Ward, President of the Manchester, and Thomas Dobson, President of the Liverpool Conferences.

After a few opening remarks from Elder Ward, Elder Basnett reported the Bolton, Elder Mills the Leigh, Elder Boydell the Halshaw Moor, Elder Stones the Pendlebury, Elder Schofield the Radcliffe, and Elder Unsworth the Bury Branches. The reports of the brethren showed that the Saints in the various Branches were united in faith and feeling and increasing in good works. Sunday schools were established and flourishing in most of the Branches, and a lively, healthy spirit prevailed amongst the Saints. Some few had been added to the Church by baptism.

In the absence of a representative from Tottington Branch, Elder Ward

reported it in a good condition. He continued by saying he felt encouraged at the representations of the brethren, for he had labored diligently to promote unity and good feelings throughout the Conference. He then gave instructions to the brethren regarding the conduct of the Sunday schools, the transaction of business matters, and the duties of Teachers.

Elder Reynolds said it had become almost universally recognized as a truth, that where the Teachers attended to their duties with zeal and prayerfulness, visiting the people with the spirit of love and kindness, that there would be found a Branch of the Church where the spirit of our holy religion reigned in the hearts of its members. He also urged parents to guard their children from the sins of the world and instruct them in the ways of the Lord, and impressed upon the Saints the necessity of not wasting their means on useless trifles, when it ought to be saved for their emigration.

2.30 p.m.

After the administration of the sacrament, Elder Dobson delivered a brief address on the blessings accruing to the Saints through gathering to Zion, and compared the pleasures of the journey now to the perils of the same some fifteen or twenty years ago.

Elder Reynolds addressed the Saints on the present position of the Church in Utah, and gave a succinct account of the causes, rise and progress of the present crusade against the people of God.

6 30 p.m.

The congregation was addressed by Elders Dobson, Reynolds and Ward, on the first principles of the Gospel, interspersed with exhortations to faithfulness, diligence and integrity.

The meetings throughout the day were largely attended, a most excellent spirit prevailed, the choir sang the songs of Zion with much spirit and sweetness, and a general feeling of joy and peace filled the hearts of the Saints.

JAMES B. WARBURTON, Clerk.

CHAPTERS FROM THE HISTORY OF THE CHURCH.

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During the winter after his return from this mission, President Young was busily engaged in assisting the Prophet Joseph in the various labors which devolved upon him. He and Brothers Heber C. Kimball and Willard Richards had received their endowments previous to this mission. In the course of the winter he assisted in giving endowments to the other brethren of the Twelve and several other Elders. This was an important season. Joseph, impressed by the Spirit of the Lord to push the work ahead as fast as possible, was full of revelation and instruction, imparting a knowledge of new principles to the Elders, which were of great importance to them and to the world. William and Wilson Law, the former a member of the First Presidency, William Marks, the President of the Stake, and other Elders manifested a strong spirit of apostacy. They directed their shafts against Joseph, and it seemed because of the power which was being manifested through the endowments, as though the devil and all his servants were stirred up with tenfold violence to persecute the Saints and to endeavor to take the life of the Prophet of God. During this trying season President Young was a great help and comfort to the Prophet. It was a time to call forth the energies and to exhibit the integrity of a man like him. During the winter Joseph offered himself as a candidate for President of the United States. He published his "Views of the Powers and Policy of the Government of the United States," and at the April Conference, 1844, three hundred and forty-four Elders volunteered to go on missions to preach the Gospel and circulate the "Views" among the people. These Elders were

to labor under the direction of the Twelve Apostles. On the 21st of May, brother Brigham started, in company with Elders Heber C. Kimball and Lyman Wight, on this mission. He and the other Elders were very diligent in circulating a knowledge of Joseph's "Views." The 27th of June, the day of the martyrdom of Joseph and Hyrum, he spent in Boston with brother Woodruff, who accompanied him to the railroad station, as he was about to take the cars for Salem. In the evening, while waiting in the depot, he felt a strange feeling of melancholy, so that he could not converse with any degree of pleasure. Not knowing anything concerning the tragedy enacted at that time at Carthage jail he could not assign any reason for his peculiar feelings.

In those days there were no telegraph lines, and but few railroads to carry intelligence; it, consequently, took a long time for news to travel from Nauvoo to the East. It was not until the 16th of July that President Young heard concerning the martyrdom of the Prophet and Patriarch from a source upon which he could rely. He was at the house of one of the brethren in Peterboro, New Hampshire, when a letter was read which one of the brethren had received from a resident of Nauvoo, giving the particulars of the murder of Joseph and Hyrum. The first thing which President Young thought of when he heard the news, was whether Joseph had taken the keys of the kingdom with him from the earth. Brother Orson Pratt sat by his side at the time. They were both leaning back on their chairs. Bringing his hand down upon his knee, President Young said, "The keys of the kingdom are all here with the Church." The same day he received a letter from brother Woodruff, confirming the news of the death of the Prophet and Patriarch, and he started for Boston, where he met brothers Kimball and Woodruff. They had to wait about a week for the arrival of Lyman Wight. They started from Boston on the 24th of July, and arrived at Nauvoo on the 6th day of August. The joy that was felt by the Saints upon their arrival was indescribable.

THE CONSTITUTIONAL CONVENTION.

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interested did not feel sufficiently injured by it to institute proceedings against the offender, the public would not notice it. It does not follow, because the prosecution of a case proceeds upon the complaint of a particular person, that therefore that person must be the complaining witness. The person who moves the prosecution before the magistrate or grand jury, may not personally know anything about the facts of the case, but he can, nevertheless, put the investigation in motion by entering a complaint, and either producing the witnesses who can establish the facts, or putting the officers of the law in the way of doing so. It means that it must be upon the motion, and with the approbation of the interested party."

In the same case the Supreme Court of Minnesota says, upon another point —"Marriages and deaths in civil actions involving questions of inheritance, the legitimacy of heirs, etc., may often be proven by admissions of the parties, inscriptions upon tombstones, memoranda in family Bibles, and a variety of circumstances which are admitted for convenience and from necessity. But in criminal prosecutions for bigamy, or in adultery, where the offence depends upon the defendant being a married man or woman, the marriage must be proven in fact, and a conviction cannot be had upon the admissions of the defendant." 7 John 314, People *vs.* Humphrey.

Yet, on the trial of Hawkins, Judge McKean permitted the prosecution to prove the marriage of Hawkins by evidence of his admissions to that effect.

Perhaps I weary the convention with all this, but as the necessity for a State

government in Utah arises largely from the character and conditions of the courts of Utah, I have thought best to recite some of the history of judicial proceedings here, that all may know the grievances of the people, and that those who sustain the course of Judge McKean may understand what it is they endorse. Perhaps the legal profession may criticise my action in reviewing, before a public assemblage, the rulings made at a trial in which I participated as counsel. I can only reply that the prosecution in these Mormon cases have constantly appealed to the public for support. They have tried their cases on the streets, in the newspapers, at public meetings, by petitions, and over the telegraph wires by means of their leading adviser, the Salt Lake agent of the Associated Press, and I do but follow their example in presenting the matter to this convention. Let those who sustain Judge McKean by petition and mass meeting, without knowing whether he is right or wrong, take heed lest the hour arrive when they shall feel need of courts where the voice of passion and public clamor cannot enter, and where those rules of law which the wisdom of ages has prescribed, will not, for any social or political exigency, be set aside.

Thus it will be seen that the four important provisions of the discarded Cullom Bill, namely no chance of jurors except by a U. S. Marshal, no Mormons to serve as jurors, the abrogation of the common law rule that a wife cannot testify for or against her husband and the new doctrine that marriage in criminal cases can be proven by admission of the defendant—are all in successful operation. That legislation to meet a local difficulty in the way of enforcing the laws, which the Senate of the United States did not deem it wise or expedient to enact, has been decreed and established by James B. McKean. That course of procedure which Chief Justice Salmon P. Chase tacitly refused to pursue, even to meet a great popular demand for the punishment of Jefferson Davis, the Chief Justice of Utah has pursued to comply with a small popular demand for the punishment of a Mormon polygamist. The judge has made those bold innovations upon precedent the contemplation of which compelled the pause of the law-making power of a great nation. Who will doubt that whenever the exigency arises the same judge will overturn another common law rule, and establish another proposition of the Cullom Bill by allowing marriage to be proved in prosecutions for polygamy by evidence of general reputation? Who will doubt that any ruling will be made that is necessary to carry out the purposes of this crusade? And what unprejudiced citizen but will regard with appehension the extension of this practice of judicial legislation? If it should ever reach beyond Utah and be adopted by the judges of our State and national courts of last resort, either a revolution would be induced, or a people who had lost their liberties would have occasion to remember John Randolph's epigram, that—"The book of Judges comes before the book of Kings."

Let me now recall some incidents in the history of the grand jury selected under the patent process to which I have referred. That grand jury found a number of indictments, not for any alleged violation of the anti-polygamy act of Congress, not for adultery as in the Hawkins case upon the evidence of the wife, but upon somebody's evidence—let us hope that the somebody was not merely public rumor—they indicted a number of prominent Mormons for the crime of "lewd and lascivious cohabitation." The law under which these indictments were found is a statute of Utah Territory and reads as follows—

"If any man or woman, not being married to each other, lewdly and lasciviously associate and cohabit together, etc., etc., every such person so offending shall be punished by imprisonment not exceeding ten years, etc., etc.

But one State in the Union has a statute exactly similar to this—the State of Massachusetts, and the Supreme Judicial Court of that State, in the case of Commonwealth *vs.* Catlin, 1st Mass. reports, page 8, decided that "evidence of secret cohabitation cannot in any degree support an indictment for this offence."

Who supposes that the defendants

in any of the cases of this character now pending in the Third District Court, will be proved to have committed any public act of cohabitation? And who does not conjecture that a petit jury selected as the grand jury was, and instructed as they doubtless will be, will probably find verdicts of guilty upon evidence of reputed secret cohabitation.

Let me return once more to the record history of the Third Judicial District Court.

Among the indictments for lascivious cohabitation is one charging that crime against Brigham Young, and charging it as having been committed with sixteen different persons at sixteen different times and places, ranging over a period of nineteen years. The counsel for the defendant asked the court to quash this indictment for multifariousness, or else compel the District Attorney to elect upon which count he would proceed. Let it be observed that there was nothing in this motion out of the regular course of proceedings in criminal cases. It was made upon legal grounds only, and supported by legal authorities. It was nowhere suggested or argued that "lascivious cohabitation" was not a crime, a felony under the laws of Utah. It was nowhere suggested or argued that evidence of a polygamous marriage would be offered, or if offered, could be received as a defence of the accusation. The motion to quash or compel an election was made before plea, and the Judge in passing upon that motion had no right to do anything except to grant or refuse it, and to express an opinion so far as to give his legal reasons for granting or refusing it.

What did he do? He went outside of the record, he assumed that the defendant was guilty before trial. He first denied the motion, giving his legal reasons therefor, and then he used the following remarkable language—

"But let the counsel on both sides, and the court also, keep constantly in mind the uncommon character of this case. The Supreme Court of California has well said: 'Courts are bound to take notice of the political and social condition of the country which they judicially rule.' It is therefore proper to say, that while the case at bar is called, *The People versus Brigham Young*, its other and real title is, *Federal Authority versus Polygamic Theocracy*. The government of the United States, founded upon a written constitution, finds within its jurisdiction another government, claiming to come from God—*imperium in imperio*—whose policy and practices are, in grave particulars, at variance with its own. The one government arrests the other, in the person of its chief, and arraigns it at this bar. A system is on trial in the person of Brigham Young. Let all concerned keep this fact steadily in view; and let that government rule without a rival which shall prove to be in the right. If the learned counsel for the defendant will adduce authorities or principles from the whole range of jurisprudence, or from mental, moral, or social science, proving that the polygamous practices charged in the indictment are not crimes, this court will at once quash the indictment, and charge the grand jury to find no more of the kind."

What wonder that the New York *Law Journal*, one of the leading legal periodicals of the country, thus criticized this remarkable language of Judge James B. McKean—

"His decisions we do not question, but the language accompanying those decisions has been often so intemperate and partial as to remind one of those ruder ages, when the bench was but a focus where were gathered and reflected the passions of the people."

[TO BE CONTINUED.]

UTAH NEWS.

The following are from the *Deseret News* to March 2—

The Bank of Deseret advertises that it has organized a savings department, and will allow interest on all deposits of $1.00 and upwards of eight per cent. per annum, compounded semi-annually.

The *Territorial Enterprise* learns from the Carson *Register* of the death of Judge John Cradlebaugh, of congestion of the lungs, at Eureka, Lander County, Nev., Feb. 19, aged about sixty. He was formerly a Federal judge in this Territory, and in that capacity manifested something of the fanaticism of McKean combined with the brutal ferocity of another character not unknown here. The *Enterprise* says, after leaving Utah, Judge Cradlebaugh was delegate to Congress from Nevada. In the late civil war he was colonel of an Ohio regiment. At Vicksburg a piece of his tongue was shot away, rendering articulation difficult ever after, and incapacitating him for further court labors. After the war he became Adjutant General in Nevada. In 1865 he became a farmer on the Carson river, and in two years was a bankrupt. Two years after, he sold his small effects, and turned freighter between Elko and White Pine, having one team, and driving it himself. Afterwards he was a member of the law firm of Bryan and Cradlebaugh, at Portland, Oregon, which, however, did not last long, and he returned to Nevada to die. Judge Cradlebaugh did not make much credit or capital out of his judicial raids on "Mormonism." The elevation from a "Mormon" eating judge to a Nevada "bull-whacker," is not a very encouraging record to judges of the McKean stripe.

At the political meeting held in the Old Tabernacle, Salt Lake City, for the nomination of candidates for the then forthcoming city election, and for delegates to the constitutional convention, the ladies took a conspicuous part. The committee appointed at that meeting to select names for nomination for city officers consisted of Messrs. Geo. Q. Cannon, J. C. Little, A. Carrington, W. C. Staines, E. D. Hoge, Mrs. Bathsheba Smith and Mrs. S. M. Kimball, and the committee appointed to select names for nomination as delegates to the Constitutional Convention consisted of Messrs. D. H. Wells, Joseph Woodmansee, E. D. Woolley, John Van Cott, I. C. Bateman, Mrs. William Howard and Mrs. E. W. East. The *News* further says:—Just as the meeting was on the point of adjourning, a gentleman handed the following resolution to the chairman, which he requested to have read to the meeting. Its reading called forth such a tumult of applause as we have seldom heard. It furnished the people an opportunity which they have not had of expressing their feelings respecting the outrageous course of the persons referred to, and they availed themselves of it. It was adopted by acclamation. *Resolved*—That it is the candid opinion of this large assembly that Chief Justice James B. McKean, in many of his official acts, and especially in refusing the bail recently asked for by the deputy U. S. District Attorney, J. L. High, under instructions from Washington, has manifested so unwise and oppressive a spirit, and so misused the power of his office, that his judicial course richly merits condemnation; and his removal from office is asked for in behalf of justice and equal rights for all before the law.

The following are from the *Salt Lake Herald*, March 2—

The business, both freight and passenger, was steadily increasing on the Utah Southern Railroad.

Building had recommenced in good earnest, and structures by the score were going up in Salt Lake City.

At Little Salt Creek, February 25, the youngest son of a Mrs. Smith was accidentally shot by another boy. He died after 20 hours suffering.

Hon. Thomas Fitch was writing a drama, most of the scenes of which are laid in the Cottonwoods. It bears the name of "Old Titles," and the plot centres on mining matters.

The following is from the *Odgen Junction*, Feb. 25—

The following Elders returning from missions to the United States reached Ogden, February 21,—A. Stalker, Henry Moon, James A. Bean, W. W. Haws, J. T. Thomas, Jacob Bushman, P. G. Taylor, David Garner, C. A. Davis, W. H. Gay, Cyrus Sanford, John Thompson, Israel Canfield, George Jaques, and W. F. Fisher.